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Submitted

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~211~~ 201

JOHN A. PARKER, PLAINTIFF IN ERROR,

vs.

HENRY L. LATEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

FILED MARCH 7, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 431.

JOHN A. PARKER, PLAINTIFF IN ERROR,

vs.

HENRY L. LATEY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEBRASKA.

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1 Pleas before the Honorable Elmer S. Dundy, judge of the district court of the United States for the district of Nebraska, sitting in the circuit court of the United States for said district, at the term of May, one thousand eight hundred and sixty-eight.

JOHN A. PARKER }
vs.
HENRY L. LATEY. }

Be it remembered that on the 30th day of September, A. D. 1867, there was filed in said circuit court, by and on behalf of the plaintiff above named, a paper in words and figures following, to wit:

In the United States circuit court, district of Nebraska.

JOHN A. PARKER }
vs.
HENRY L. LATEY. }

Now comes the said plaintiff, John A. Parker, by J. M. Woolworth, his attorney, & complains of the said defendant, Henry L. Latey,
2 & says that the said plaintiff is a citizen of & resident in the State of Virginia, & that the said defendant is a citizen of & resident in the State of Nebraska; that *that* the said plaintiff is seized of an estate in fee-simple in, & is entitled to the possession of, & said defendant unlawfully keeps said plaintiff out of, the possession of all that certain piece or parcel of land situate in the city of Omaha, in the county of Douglas, & State of Nebraska, known and described as follows, to wit: Commencing at a point forty-four (44) feet north of the southeast corner of lot one, (1,) in block one hundred and twenty-one, and running west twenty-two feet; thence north forty-four feet, (44;) thence east twenty-two (22) feet; thence south forty-four feet, (44,) along the east line of said lot, to place of beginning, which premises are of the value of five hundred dollars and over.

Wherefore said plaintiff prays judgement for the possession of said premises, & costs of suit.

J. M. WOOLWORTH,
Pl'ff's Att'y.

3 STATE OF NEBRASKA,
Douglas County, ss:

J. M. Woolworth, being duly sworn, says he is attorney for plaintiff in above petition; that said plaintiff is a non-resident of, & absent from, said State, & deponent believes said petition to be true.

J. M. WOOLWORTH.

Subscribed in my presence & sworn to before me this 30th day of September, 1867.

[L. S.]

WATSON B. SMITH,
Notary Public within & for Douglas Co.

Upon which said paper appears endorsements in words and figures following, to wit:

124. U. S. circuit court. John A. Parker vs. Henry L. Latey. Petition. J. M. Woolworth, pl'ff's att'y.

Filed Sept. 30th, 1867.

E. B. CHANDLER, *Clerk.*

4 And thereupon afterwards, to wit, on the 30th day of September, A. D. 1869, a paper was issued out of the clerk's office of said court in words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Nebraska, ss :

The President of the United States of America to the marshal of the district of Nebraska:

You are hereby commanded to notify Henry L. Latey that he has been sued by John A. Parker, & that he must answer the petition which the said John A. Parker has filed in the office of the clerk of the United States circuit court for the district of Nebraska on or before the 4th day of November, 1867, or said petition will be taken as true, & judgement rendered accordingly.

You will make due return of this writ, with your proceedings endorsed thereon, on or before the 14th day of October, 1867.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, & the seal of said circuit court, this 30 day of September, 1867.

[L. S.] E. B. CHANDLER, *Clerk.*

5 Upon which said paper appears endorsements in words and figures following, to wit:

124. U. S. circuit court. John A. Parker vs. Henry L. Latey. Summons. Action for recovery of part of lot 1, block 121, Omaha.

DISTRICT OF NEBRASKA, *ss:*

I hereby certify and return that on the 30th day of Sept., 1867, I received the within writ, and on the same day served the same on the def't, Henry L. Latey, by reading the same to him and leaving a copy thereof with him.

Fees, $2 20.

C. E. YOST, *U. S. Marshal,*
By W. B. SMITH, *Deputy U. S. M.*

Filed Oct. 3d, 1867.

E. B. CHANDLER, *Clerk.*

And thereupon afterwards, to wit, on the 7th day of November, A. D. 1867, a paper was filed in said circuit court in words and figures following, to wit:

JOHN A. PARKER, PLAINTIFF,
vs.
HENRY L. LATEY, DEFENDANT.

6 In circuit court of the United States for the district of Nebraska.

Come now said defendant, and, for answer to the petition, denies that the plaintiff is the owner in fee or otherwise of the land described in the petition; and further denies that the plaintiff has a real estate therein, or that the plaintiff is entitled to the possession thereof. But the defendant alleges that he is the owner of said land in fee-simple, and is in, and is entitled to, the possession thereof, and prays judgement against the plaintiff.

REDICK & BRIGGS
Att'ys for Def't.

DISTRICT OF NEBRASKA, *Douglas County, ss:*

Henry L. Latey, being by me first duly sworn, deposes and says he is the defendant named in the above answer, & that he has read the same, and knows the contents thereof, and that the facts therein stated are true, as he verily believes.

HENRY L. LATEY.

Subscribed in my presence and sworn to before me this 6th day of November, 1867.

[L. S.]

BEN. SHEEK,
Probate Judge.

7 Upon which said paper appears endorsements in words and figures following, to wit:

No. 124. Circuit court U. S. John A. Parker vs. Henry L. Latey. Answer. Filed Nov. 7th, 1867. E. B. Chandler, clerk. Redick & Briggs, atty's for def't.

And thereupon afterwards, to wit, on the 8th day of November, A. D. 1868, the following proceedings were had, and appear of record in said cause in words and figures following, to wit:

JOHN A. PARKER
vs.
HENRY L. LATEY. } 124.

This cause having come on to be tried before his honor the judge presiding, and a jury, came the following good and lawful men, to wit: 1, Alfred Burley; 2, W'm A. Pollock; 3, Ralph Bowman; 4, St. John Goodrich; 5, James G. Megeath; 6, Robert Jordan; 7, Alonzo Perkins; 8, Henry French; 9, Albert Tucker; 10, Phillip R. Helan;
8 11, Samuel Orchard; 12, Charles Beindorf; who were then and there duly sworn to try the issue joined therein, and after the hearing of the evidence of the parties, and the argument of their respective counsel, and the charge of the court, retired to consider of their verdict; and thereupon returned into the court and then and there rendered their verdict as follows:

"We, the jury in the above-entitled cause, duly impannelled and sworn to try the same, do find the issue joined therein for the plaintiff, and that the said plaintiff is entitled to the possession of the premises in question therein."

And thereupon, on motion of J. M. Woolworth, esq., attorney for said plaintiff, it is now here considered and adjudged by the court that the said plaintiff have and recover from said defendant the possession of the premises here in question, to wit, lot one, in block number one hundred and twenty-one, in Omaha; and that the proper writ of possession issue out of this court for the purpose, putting said plaintiff in possession thereof.

And thereupon came the said defendant, by Redick and Briggs, his attorneys, and gave notice on the journal that he demanded, and he did demand, another trial herein.

And thereupon it is ordered, considered, and adjudged that the above judgement be, and the same is hereby, vacated; and that said action stand for trial at the next term of the court.

9 And thereupon afterwards, to wit, on the 8th day of May, A. D. 1868, a paper was filed in said circuit court in words and figures following, to wit:

JOHN A. PARKER
vs.
HENRY L. LATEY.

On the trial of this cause it was admitted by both parties that in the spring of the year 1861, & thence to the close of the late rebellion, John A. Parker, junior, the grantor of the premises in question to the plaintiff therein, was a citizen of the State of Virginia, and in the army of the so-called Confederate States.

Dated Omaha, May 8, 1868.

J. M. WOOLWORTH,
Pl'ff's Att'y.
REDICK & BRIGGS,
Defendant's Att'y.

Upon which said paper appears endorsements in words and figures following, to wit:

1234. U. S. circuit court, district of Nebraska. John A. Parker vs. Henry L. Latey. Stipulation. Filed May 8th, 1868, E. B. Chandler, clerk.

10 And thereupon afterwards, to wit, on the 8th day of May, 1868, the following proceedings were had and appear of record in said cause in words and figures following, to wit:

JOHN A. PARKER
vs. 124.—Ejectment.
HENRY L. LATEY.

This cause having come on for trial; and the parties, demanding a jury, thereupon claim Henry Gray, Andrew R. Orchard, John L. Martin, A. B. Fuller, J. H. Brown, Jacob King, E. C. Staugland, Abraham Hirsch, William Healy, E. Fleming, L. P. Tuttle, and Philander Reed, good and lawful men, who were duly sworn to try the issues joined; and the testimony not being closed at the usual hour of adjournment, the said jury were instructed to hold no conversation with any person relating to the matters before them, and were adjourned to meet at the coming in of court at half past nine to-morrow morning.

11 And thereupon afterwards, to wit, on the 9th day of May, A. D. 1868, the following proceedings were had and appear of record in said cause in words and figures following, to wit:

JOHN A. PARKER
vs. 124.—Ejectment.
HENRY L. LATEY.

This cause having this day come on to be heard, and the jury empannelled herein having heard the testimony adduced, the arguments of counsel, and the charge of the court, retire, in charge of a sworn bailiff of this court, to their room, to consider of their verdict, the said parties stipulating and agreeing that said jury might seal and deliver the same

to the court or the clerk thereof; and the said jury having agreed upon their verdict, and having sealed and delivered the same to the judge, it was opened in open court, and is in words and figures following, to wit:

"We, the jury empannelled and sworn in this cause, do find upon the issues joined in this cause for the defendant; and do further find that the plaintiff is not, nor was he at the commencement of this suit, the owner of, or entitled to the possession of, the premises described in the petition, to wit: Commencing at a point forty-four (44) feet north
12 of the southeast corner of lot one, (1,) in block one hundred and twenty-one, (121,) in the city of Omaha, Douglas County, Nebraska; thence running west twenty-two (22) feet; thence north forty-four (44) feet; thence east twenty-two (22) feet; and thence south forty-four (44) feet, along the east side of said lot, to the place of beginning. And we do further find that the plaintiff has no estate in said premises, nor had he any estate therein at the time this suit was commenced."

Which said verdict was signed "A. B. Fuller, foreman," together with all other of said jurors.

And thereupon afterwards, to wit, on the 9th day of May, A. D. 1869, a paper was filed in said court in words and figures following, to wit:

Henry L. Latey, a witness sworn in this cause: The defendant offers to prove by said witness that John A. Parker, junior, an agent of the plaintiff, stood by while the defendant was erecting a brick building on the premises in question, and did not make known to the deft. that the plaintiff claimed title to said premises, and that the deft. was
13 in possession of the same at that time. To which offer the pl'ff objects. Objection sustained, to which ruling deft. excepts.

E. S. DUNDY, *Judge*

Upon which said paper appears endorsements in words and figures following, to wit:

124. John A. Parker vs. H. L. Latey. Offer of testimony. Filed May 9, 1868, E. B. Chandler, clerk.

Thereupon afterwards, to wit, on the 9th day of May, A. D. 1868, a paper was filed in said circuit court in words and figures following, to wit:

Testimony of Tho's L. Sutton.

JOHN A. PARKER }
vs.
HENRY L. LATEY. }

I was sheriff of Douglas County in 1862.

I did make a deed to John I. Redick & Clinton Briggs, of the property in dispute, as sheriff of Douglas County, & I delivered the deed to Redick & Briggs.

14 *Clinton Briggs' testimony.*

The deed inquired after was delivered by Mr. Sutton, sheriff, to Redick & Briggs, in the year 1862, after the sale was made & confirmed.

The deed, to my best recollections, was taken from our office by Tho's

L. Sutton, sheriff, soon after the deed was delivered to us, & has not been returned to us by the sheriff. The deed was taken by the sheriff for the purpose of being used by the sheriff as a form for drawing some other deed, as was alleged by the sheriff. We have made search for that deed on a dozen different occasions, and have made the most thorough search, & have been unable to find it.

Cross-examination:

I did make an aff't that I believed the deed never was made.
I did not swear positively that the deed never was made.
I made the aff't about two years ago, as near as I can recollect.
I suppose the aff't to be in the papers in the clerk's office.

15 Recalled:

The city of Omaha were about to sell a portion of the property in question, but were unable to show the purchasers abstract of title, for the reason that no deed appeared of record from Redick & Briggs. The city att'y asked me how that was. I told him I thought there was a deed on record from the sheriff to us. I then examined the record & found there was no such deed; & believing at the time, from that fact, that no deed had been made by the sheriff, I made the affidavit. Afterwards I had a conversation with Sutton, sheriff, & he told me he had made a deed to us, & stated fully the circumstances of the making this deed & taking it away; & these circumstances stated by him brought the transaction fresh to my mind, & found I was mistaken in what I had stated in the aff't.

Tho's L. Sutton recalled.

I saw the deed frequently in the office after he delivered it to Redick & Briggs. I had it for the purpose making other deeds—other sheriff's deeds.

16 The last time I saw it was in the sheriff's office, when I turned my papers over to my successor.

I had access to my successor's papers after I went out of office.

I searched over all the papers I had or used in the office. I opened every paper I had in the sheriff's *sheriff's* office; also my private papers.

I never searched his papers, but asked him to. He*d* did not do anything in my presence.

I looked through what papers my successor had in his office.

I think the desk was my own; the sheriff used it the same as I did, & we looked the papers all over. I was not able to find the deed.

I have no reason to think that any person has it.

I looked through all the papers before I turned my office over to my successor, & it was with the papers. Afterwards when I looked through the papers in my successor's office, I did not find it. I did not turn the deed over with the other papers.

Cross-examined:

17 I do not recollect the day, but it was about the time the office fell to my successor; do not recollect the time; do not recollect the year.

There had no controversy arisen before I turned my office over, as I know of.

I asked him if he wanted the deed, and he said he did not.

I remember that transaction distinctly.

I laid the deed down on the table in the centre of the office.

That was the last time I ever saw it. I supposed I had put it away with my other papers. I never saw it afterwards.

I did not look upon the deed as being of much value, & I thought he looked upon it about the same. I borrowed the deed of Judge Briggs to make a deed of some property I sold for Poppleton. He told me I could have it; and when I got through to leave it with Byron Reed to be recorded. I did not do it, for the reason that I wanted the deed for reference, & if I left it with Reed I could not get it again.

I did not tell John A. Parker I never made the deed.

I never told him I never delivered the deed.

18 I did not tell him absolutely, long after the controversy arose, that I had the deed in my office.

J. I. Redick sworn.

Says he is one of the grantees in that deed, & at three or four different times searched my papers thoroughly, & could not find it, & believe the deed to be lost; and that I saw the deed in the office of Redick & Briggs, on our table, & I never knew from any personal knowledge how the deed go out of our office.

Cross-examined:

I cannot state with any certainty. After we had sold the property to the city of Omaha, they were about to sell it to some one else, & came to us, and said the abstract was imperfect. That was the first I knew anything about it.

Aaron Hoel sworn.

I am sheriff of Douglas County. I have made examination of my office, & can find no deed from Tho's L. Sutton J. I. Redick & C. Briggs.

19 *Andrew Delone sworn.*

I was the successor of Thomas L. Sutton, sheriff.

I do not remember having seen a deed in my office from Tho's L. Sutton to John I. Redick & Clinton Briggs.

Mr. Sutton had many papers in the office when I took possession, & I do not know whether I ever looked them all over or not; never saw a paper of that kind.

Clinton Briggs sworn.

I drew the deed in question, & handed it to the sheriff, T. L. Sutton, for the purpose of having him execute it. The sheriff did execute the deed by signing his name to it as grantor, & by acknowledging it before some officer, whose name I do not remember. The deed was by T. L. Sutton, grantor, to J. I. Redick & Clinton Briggs, grantees. The deed was executed to us in his capacity as sheriff of Douglas County.

The deed was in the usual form of sheriffs' deeds, & the descrip-

20 tion of the lands conveyed was the same as the description of the lands in the order of sale issued in the case of George Armstrong against Addison R. Gillmore and others issued out of the district court of Douglas County.

Cross-examined:

I have no definite recollection whether the deed recited the name of Addison R. Gillmore & John A. Parker, jr., or simply Addison R. Gillmore et al.

Sutton recalled.

As I recollect, *in* the deed described the same lands as were described in the order of sale in the case of George Armstrong vs. Addison R. Gillmore & John A. Parker, jr.

It was the same property described in the return made on the order of sale.

I acknowledged the deed. The grantee was John I. Redick & Clinton Briggs. The grantor was T. L. Sutton, sheriff of Douglas County. The consideration was two hundred dollars.

21 I do not recollect who witnessed the deed. There might have been some one else who witnessed it. I signed it in presence of the notary.

Cross-examined:

I cannot swear positively that this deed recited the judgement on which the order of sale issued. I cannot swear positively that the deed stated the term of court at which the judgement was rendered. I will swear positively that the name of some person was signed to it as a witness, to the best of my knowledge. I cannot tell the description of the premises, except by referring to one of these papers. I compared the description in the deed with the description in the order of sale. I do not know as I compared the discription with any other of the papers except the order of sale. I do not recollect whether the description in the deed stated that the premises were in the county of Douglas. I

22 do not recollect whether the deed stated the premises were in the city of Omaha. I do not recollect the date of the deed.

James M. Woolworth sworn.

Says he does not know where the deed is; has not got & never saw it.

Woolworth recalled.

I have been acquainted with John A. Parker, jr., & John A. Parker, sr., ever since early in the spring of 1857. They lived here for a considerable time, John A. Parker leaving here in the spring of 1861. I did not know personally of his whereabouts any further than that he was not an inhabitant of this State. Iimmediately upon the close of the war, I rec'd letters from him through the post office, from Dinviddie Court House, Virginia, & I wrote him letters addressed to that point, & received answers thereto from him; from *there*, during the entire period of my acquaintance with him, he has represented this to be his home.

Cross-examination:

I will swear positively that he left in the spring of 1861.

23 Upon which said paper appears endorsements in words and figures following, to wit:

124. John A. Parker vs. Henry L. Latey. Testimony. Filed May 9th, 1868, E. B. Chandler, clerk.

And thereupon afterwards, to wit, on the 12th day of May, A. D. 1868, a paper was filed in said circuit court in words and figures following, to wit:

Motion for new trial.

In the circuit court of the United States, district of Nebraska.

JOHN A. PARKER
vs.
HENRY L. LATEY.

Now comes the said plaintiff by J. M. Woolworth, his attorney, & moves the court for a new trial in the above-entitled cause, & to set aside the verdict rendered therein, for the reasons following, to wit:

1st. The court erred in admitting in evidence the record of
24 proceedings of the district court of the late Territory of Nebraska in a suit between George Armstrong, plaintiff, & John A. Parker et al., defendants.

2nd. The court erred in refusing to charge the jury, as requested by said plaintiff, that the said proceedings were inoperative, and that by virtue thereof no title past to Redick & Briggs.

3rd. The court erred in directing the jury to find for the defendant.

4th. The said finding was against the law & the testimony.

J. M. WOOLWORTH, *Pl'ff's Att'y.*

Upon which said paper appears endorsements in words and figures following, to wit:

124. U. S. circuit ct. John A. Parker vs. Henry L. Latey. Mo. for new trial. J. M. Woolworth, pl'ff's att'y. Filed May 12th, 1868, E. B. Chandler, clerk.

25 And thereupon afterwards, to wit, on the 30th day of May, A. D. 1868, a paper was filed in said circuit court in words and figures following, to wit:

Bill of exceptions.

In the United States circuit court, district of Nebraska.

JOHN A. PARKER
vs.
HENRY L. LATEY.

Be it remembered that, at the term of May, 1868, in the United States circuit court for the district of Nebraska, the above-entitled cause came on to be tried before the Honorable Elmer S. Dundy, district judge, presiding, and a jury.

And thereupon the said plaintiff, to maintain the issues joined on his part, read in evidence, to the court and jury, letters-patent of the United States to Jesse Lowe, mayor of the city of Omaha, a copy of which is hereto attached, marked "A."

And the said plaintiff, further to maintain the said issues on his part, read in evidence to said court and jury five several deeds of conveyance, copies whereof are hereto annexed, marked respectively "B," "C," "D," "E," "F."

And the said defendant then and there admitted that the
26 premises described in said deeds are included in the lands mention in said letters-patent.

And the said plaintiff, further to maintain the said on his part, offered and read in evidence to the court and jury the deed made by John A. Parker, junior, to John A. Parker, dated September 26th, 1867, a copy of which is hereto annexed, marked "G."

And thereupon the said plaintiff rested his case.

And thereupon the parties, plaintiff and defendant, made upon the record then and there a certain admission, as follows:

"On the trial of this cause, it was admitted by both parties that in the spring of the year 1861, and thence to the close of the late rebellion, John A. Parker, junior, the grantor of the premises in question to the plaintiff therein, was a citizen of the State of Virginia, and in the army of the so-called Confederate States."

And thereupon the said defendant, to maintain the issues on his part, offered in evidence the record of the district court of the late Territory of Nebraska, for Douglas County, in a certain cause wherein
27 George Armstrong was plaintiff, and John A. Parker, junior, and Addison R. Gillmore were defendants, a copy of which is hereto annexed, marked H. And thereupon the said plaintiff objected to the reading of the said record in evidence, on the ground that the said court had no jurisdiction of the parties nor of the subject-matter nor of the said premises; which objection was overruled by said court; to which order and ruling of said court said plaintiff then and there duly excepted, & prayed the said judge to sign and seal this his bill of exceptions, which is done.

And thereupon the said defendant proved that Thomas L. Sutton had, as sheriff of said county, made and delivered a deed of the premises mentioned in said record to John I. Redick and Clinton Briggs; that said deed was afterwards lost, and that said deed was in the form prescribed by law for such deeds, and was duly executed and acknowledged.

And thereupon the said plaintiff produced as a witness J. M. Woolworth, who, being duly sworn, testified "that he had been acquainted
28 with John A. Parker, junior, and John A. Parker, senior, ever since the spring of 1861; they lived here for a considerable time; John A. Parker, junior, left here in the spring of 1861. I did not know personally of his whereabouts any further than that he was not an inhabitant of this State. Immediately after the close of the war, I received letters from him, through the post office, from Dinwiddie Court House, Virginia, and wrote him letters addressed to that point, and received answers thereto from him; from then, during the entire period of my acquaintance with him, he has represented that to be his home.

Cross-examined:

"I will swear positively that he left here in the spring of 1861."

And thereupon the said plaintiff rested his case.

And thereupon the said judge instructed the said jury that, if they believed from the evidence that the sheriff's deed was in the usual form, the said jury will find for the defendant. If they do not so believe, they should find for the plaintiff.

ELMER S. DUNDY, *Judge.*

29 The United States of America to all whom these presents shall come, greeting:

Jesse Lowe, mayor of the city of Omaha, in trust for the several use & benefit of the occupants thereof, according to their respective interests, whereas, and as the proper corporate authority under the town-site act of Congress, approved 23rd May, 1844, entitled "An act for the relief of the citizens of towns upon the lands of the United States under certain circumstances," has deposited in the General Land Office of the United States a certificate of the register of the land office at Omaha, whereby it appear that full payment has been made by the said Jesse Lowe, mayor of the city of Omaha, and in trust as aforesaid, according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provisions for the sale of the public lands," for the south half of the northeast quarter of section twenty-two, and the lot numbered two, of section twenty-three, in township fifteen north, of range thirteen east, in the district of lands subject to sale at Omaha, Nebraska, containing one hundred and thirty-
30 eight acres and twenty-hundredths of an acre, according to the official plat of the survey of the said lands returned to the General Land Office by the surveyor general, which said tracts have been purchased by the said Jesse Lowe, mayor of the city of Omaha, and in trust as aforesaid:

Now, know ye that the United States of America, in consideration of the premises and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said Jesse Lowe, mayor of the city of Omaha, and as the proper corporate authority thereof, in trust for the several use and benefit of the occupants thereof, according to their respective interests, under said act of 23rd May, 1844, and to his successors and assigns, in trust as aforesaid, the said tracts above described: To have and to hold the same, together with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, unto the said Jesse Lowe, mayor of the city of Omaha, and as the proper corporate authority thereof, in trust for the
31 several use and benefit of its occupants thereof, according to their respective interests, under said act of May 23rd, 1844, and to his successors and assigns in trust as aforesaid.

In testimony whereof I, James Buchanan, President of the United States of America, have cause these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the first day of October, in the year of our Lord one thousand eight hundred & sixty, and of the independence of the United States the eighty-fifth.

JAMES BUCHANAN.

By the President:
[SEAL.] By J. B. LEONARD, *Sec'y.*

Recorded vol. 2, page 450, E.

J. N. GRANGER,
Recorder of the General Land Office.

Endorsed on the back of the foregoing patent is the following:

United States to the city of Omaha. Rec'd Dec. 31st, 1860, at 2 o'c. p. m., and recorded in book N, of deeds, at page 121. Thomas O'Connor, reg. of deeds.

32 G, 313.—B.

Mayor of the city of Omaha to J. W. Pickard.

This indenture, made July 23rd, 1857, witnesseth:

That whereas the Congress of the United States passed an act entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances," approved May 23rd, A. D. 1844:

And whereas the legislative assembly of the Territory of Nebraska, under and in pursuance of an act of the said Congress, passed an act entitled "An act regulating the disposal of lands purchased in trust for town sites," approved February 10th, 1857, and having paid for and received a title from the United States in trust for the occupants and owners of the lots and pieces of lands in the city of Omaha, and Territory of Nebraska, which city is located upon the northeast quarter and the north half of the northwest quarter, of section No. 22, and lot No. 2, in fractional section No. 23, in township 15 north, of range 13 east, of the district of lands subject to sale at Omaha City, Nebraska:

Now, thereupon, by virtue of the power in me vested by the
33 two several acts as mayor of the city of Omaha, in consideration of the premises and the sum of two dollars and fifty cents to me paid, the receipt whereof is hereby acknowledged, do by these presents convey unto J. W. Pickard all that certain piece or parcel of land lying and being in the city of Omaha, county of Douglas, and Territory of Nebraska, as originally surveyed by A. D. Jones, and lithographed by the Council Bluffs and Nebraska Ferry Company, and described as follows, to wit: Lot No. one, (1,) in block No. one hundred and twenty-one, (121.)

In witness whereof I have hereunto set my hand and seal of office the day and year above written.

[SEAL.] JESSE LOWE,
Mayor of the City of Omaha.

In presence of—
J. M. WOOLWORTH.
H. L. DUGAIL.

TERRITORY OF NEBRASKA, *Douglas County:*

On this 23rd day of July, A. D. 1857, before me, the subscriber, James M. Woolworth, a notary public in and for said county and Territory, personally appeared Jesse Lowe, mayor of the city of Omaha, &
34 acknowledged the execution of the several acts therein named.

And I further certify that I know the said Jesse Lowe, who made the said acknowledgement, to be the identical person whose name is affixed to said deed as grantor, and who is mayor of said city.

In witness whereof I have hereunto set my hand and official seal the day and year above written.

[SEAL.] JAMES M. WOOLWORTH,
Notary Public.

Filed and recorded August 10th, 1857, at—
Attest: THOMAS O'CONNOR, *Reg.*

35 I, 100.—C.

Pickard to Shoemaker.

This indenture, made and entered into this eighteenth day of Sept'b'r, one thousand eight hundred and fifty-seven, between James M. Pickard, & Jane, his wife, of the county of Douglas, and Territory of Nebraska, of the first part, and Henrietta Shoemaker, of Douglas County, and Territory of Nebraska, of the second part, witnesseth that the said party of the first part, in consideration of the sum of two thousand dollars to them paid, have sold, and by these *presence* do sell and convey, to the said party of the second part, and her heirs and assigns forever, all of that certain piece or parcel of land known and described as follows: That portion of lot No. one, in block one hundred and twenty-one, in the city of Omaha, Douglas County, Nebraska, as surveyed by A. D. Jones and lithographed by the Council Bluffs and Nebraska Ferry Company, described as follows: Commencing at the northeast corner of said lot, running thence west twenty-two feet; thence south ninety feet; thence west thirteen feet; thence south twenty feet; thence east thirty-five feet; thence north *north* one hundred and ten feet, to the place of beginning, together with all the appurtenances thereunto belonging,
36 and all the estate, title, and interest of the said party of the first part therein. And the said party of the first part, for themselves and their heirs, hereby covenant and agree that, at the delivery hereof, they are the lawful owners of the premises above granted, and are seized of a good and indefeasable estate of inheritance therein; and that the said premises are free and clear of all incumbrances, of any and every name and nature; and that the said party of the first part will warrant and defend the said premises above described, with the appurtenances, unto the said party of the second part, and her heirs and assigns forever, against each and every person whomsoever lawfully claiming any interest therein.

In testimony whereof the said parties of the first part have hereunto set their hands & seals the day and year first above written.

JAMES W. PICKARD. [L. S.]
JANE PICKARD. [L. S.]

Signed, sealed, and delivered in presence of—
JONAS SEELY.

TERRITORY OF NEBRASKA,
Douglas County, ss:

37 On this eighteenth day of September, A. D. 1857, before me, a notary public in and for said county, personally appeared the above-named James W. Pickard, and Jane Pickard, his wife, known to me to be the identical persons whose names are affixed to the foregoing instrument as grantors, and acknowledged the same to be their voluntary act and deed.

[SEAL.]

JONAS SEELY,
Notary Public, Douglas County, N. T.

Filed and recorded Nov'b'r 6th, 1857, at 11 o'c. a. m.
Attest: THOMAS O'CONNER,
Co. Reg'r.

38 I, 259.—D.

Jesse Shoemaker to Geo. M. Mills.

This indenture, made the eighteenth day of August, in the year of our Lord one thousand eight hundred and fifty-nine, between Jesse Shoemaker and Henrietta Shoemaker, of the county of Douglas, Nebraska Territory, party of the first part, and George M. Mills, of the same place, party of the second part, witnesseth that the said party of the first part, in consideration of the sum of eight hundred dollars to us paid in hand, hath granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, all that certain piece or parcel of land situate in the county of Douglas, Territory of Nebraska, and more fully described as follows: Part of lot one, (1,) in block one hundred and twenty-one, (121,) in the city of Omaha, as surveyed and
39 platted by A. D. Jones, and lithographed by the Council Bluffs and Nebraska Ferry company, commencing at a point twenty-two feet (22) from the southeast corner of said lot, on the east line of the same; thence running west parallel with the south line of said lot thirty-five feet; thence north parallel with the west line of said lot twenty (20) feet; thence east parallel with the south line of said lot thirteen (13) feet; thence north parallel with the east line of said lot forty-six (46) feet; thence east parallel with the south line of said lot twenty-two (22) feet; thence south sixty-six (66) feet, along the line of 12th street, to the place of beginning, together with all the appurten'ces. And the said party of the first part, for themselves and their heirs, doth hereby covenant and agree with the said party of the second part, his heirs and assigns, that at the delivery hereof the said party of the first part is the lawful owner of the said premises, and seized of a good and indefeasable estate of inheritance therein, clear of all incumbrance whatever of every name and nature; that the said party of the first part, and their heirs, and all persons lawfully or equitably deriving any estate,
40 right, title, or interest of or to said premises by, from, upon, or in trust for him or them, shall, at all times, make, do, and execute, or cause to be made, done, and executed, all and every such further and other lawful and reasonable acts of conveyances and assurances, for the better and more effectually vesting and confirming the said premises in and to the said party of the second part, his heirs or assigns forever, as the said party of the second *party of the second* part shall reasonably require; and that the said party of the first part will warrant and defend the above-described premises in the *quit* and peaceable possession of the said party of the second part, his heirs or assigns forever.

In witness whereof the party of the first part has hereunto set their hands the day and year above written.

JESSE SHOEMAKER.
HENRIETTA SHOEMAKER.

Executed and delivered in presence of—
CLINTON BRIGGS.
D. D. BELDEN.

TER. OF NEBRASKA, *County of Douglas, ss:*

On this 19th day of August, 1859, before me, the subscriber, came

Jesse Shoemaker, and Henrietta Shoemaker, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing instrument as grantors, and acknowledged the execution thereof to be their voluntary act and deed.

Witness my hand and official seal.

CLINTON BRIGGS,
Probate Judge for Douglas County, Nebraska Territory.

Recorded Aug. 20, 1859, at 9 o'clock a. m.

THO'S O'CONNOR, *Reg.*

M, 358.—E.

Mills to Rogers.

Know all men by these presents that we, George M. Mills and Anna Mills, his wife, of the city of Omaha, and Territory of Nebraska, i consideration of the sum of eight hundred dollars in hand paid, do hereby sell and convey unto Martha Rogers, of Douglas County, and Territory of Nebraska, the following-described premises, to wit: All that parcel of land situated in the county of Douglas, and Territory of Nebraska, described as follows: Part of lot one, (1,) in block one hundred and twenty-one, (121,) in the city of Omaha, commencing at a point twenty-two (22) feet from the southeast corner of said lot on the east line of the same; thence running west parallel with the south line of said lot thirty-five (35) feet; thence north parallel with the west line of said lot twenty feet, (20;) thence east parallel with the south line of said lot thirteen (13) feet; thence north parallel with the east line of said lot forty-six (46) feet; thence east parallel with the south line of said lot twenty-two feet; thence south sixty-six (66) feet, along the line of Twelfth street, to the place of beginning. And we do hereby covenant with the said Martha Rogers that we are lawfully seized of said premises; that they are free from incumbrance; that we have good right and lawful authority to sell and convey the same. And we do hereby covenant to warrant and defend the said premises against the lawful claims of all persons whomsoever.

And the said Anna Mills hereby relinquishes all her right of dower in and to the above-described premises.

Signed this 27th day of March, A. D. 1860.

GEO. M. MILLS,
ANNA MILLS.

In presence of—
CLINTON BRIGGS.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

On 27 day of March, A. D. 1860, before me, mayor of Omaha & ex-officio justice of the peace in and for the city of Omaha, in said county, personally came George M. Mills, & Anna Mills, his wife, personally known to me to be the identical persons whose names are affixed to the above deed as grantors, and acknowledged the same to be their voluntary act and deed.

[CITY SEAL.] CLINTON BRIGGS,
Mayor of the City of Omaha, & ex-officio Justice of the Peace.

Recorded April 12, 1860, at 2 p. m.

44 M, 622.—F.

Rogers to Parker, jr.

Know all men by these presents that we, Samuel E. Rogers, and Martha Rogers, his wife, of Douglas County, Nebraska Territory, in consideration of the sum of four hundred dollars in hand paid by John A. Parker, jr., of Douglas County, Nebraska Territory, do hereby sell and convey unto the said John A. Parker, jr., the following-described premises, to wit, all the parcel of land situated in the county of Douglas, and Territory of Nebraska, described as follows: Part of lot No. one, (1,) in block No. one hundred and twenty-one, (121,) in the city of Omaha, commencing at a point twenty-two feet from the southeast corner of the said lot on the east line of the same; thence running west parallel with the south line of said lot (35) thirty-five feet; thence north parallel with the west line of said lot twenty (20) feet; thence east parallel with the south line of said lot thirteen (13) feet; thence north parallel with the east line of said lot forty-six (46) feet; thence east
45 parallel with the south line of said lot 22 feet; thence south sixty-six (66) feet, along the line of Twelfth (12th) street, to the place of beginning. And we do hereby covenant with the said John A. Parker, jr., his heirs and assigns, that we are lawfully seized of said premises; that they are free from incumbrances; that we have good right and lawful authority to sell and convey the same. And we do hereby covenant to warrant and defend the same against the lawful claims of all persons whomsoever.

And the said Martha Rogers hereby relinquishes her right of dower to the premises hereinbefore conveyed.

Signed this 19th day of October, A. D. 1860.

SAMUEL E. ROGERS.
MARTHA ROGERS.

In presence of—
JONAS SEELY.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

On this 19th day of October, A. D. 1860, before me came Samuel E. Rogers and Martha Rogers, to me personally known to be the identical persons whose names are affixed to the above deed as grantors, and acknowledge the same to be the voluntary act and deed; and the
46 said Martha Rogers, wife of the said Samuel E. Rogers, being by me made acquainted with the contents of said instrument, acknowledged on an examination, apart from her husband, that she executed the same, and relinquished her right of dower to the real estate therein conveyed voluntarily and without compulsion or undue influence of her said husband.

JONAS SEELY,
Notary Public, Douglas Co., N. T.

Recorded Oct. 22, 1860, at 8½ o'cl. a. m.

STATE OF NEBRASKA, *County of Douglas, ss:*

I, Frank Murphy, county clerk and ex-officio register of deeds in & for said county, do hereby certify that the foregoing five several papers are, and each & every of them is true, and correct copies from the records of deeds in my office as county clerk & register aforesaid of five

several deeds remaining of record in my said office, & of the whole thereof.

In witness whereof I have hereunto set my hand and the seal of said county this 7th day of November, A. D. 1867.

[L. S.] FRANK MURPHY,
County Clerk.

47 *Quit-claim deed.*

Know all men by these presents that I, John A. Parker, jr., of Douglas County, and State of Nebraska, in consideration of the sum of one hundred doliars in hand paid by John A. Parker, of Dinwiddie County, and State of Virginia, the receipt whereof is hereby acknowledged, have bargained, sold, and quit-claimed, and by these presents do bargain, sell, & quit-claim, unto the said Jno. A. Parker, and to his heirs and assigns forever, all our, and each of our, right, title, interest, estate, claim, and demand, both at law and in equity, and as well in possession as in expectancy, of, in, & to all that *contain* messuage or tract of land situate in Douglas County, and State of Nebraska, bounded and described as follows: Commencing at a point forty-four (44) feet north of the south-east corner of lot one, (1,) in block one hundred and twenty-one, and running west twenty-two feet; thence north forty-four feet, (44;) thence east twenty-two (22) feet; thence south forty-four feet, (44,) along the east line of said lot, to place of beginning, being and lying in the city of Omaha, Nebraska, with all and singular the hereditaments and
48 appurtenances thereunto belonging, or in any wise appertaining: To have and to hold the above-released premises to the said John A. Parker, heirs and assigns, to his use and behoof forever.

In witness whereof we, the said John A. Parker, jr., have hereunto set our hands and seals this 26th day of September, in the year of our Lord one thousand eight hundred and sixty-seven.

JOHN A. PARKER, JR.

In presence of—
GEORGE M. ROBERTS.

STATE OF NEBRASKA, *Douglas County, ss:*

On this 26th day of September, A. D. 1867, before me, a notary public in and for said county, personally came John A. Parker, jr., who are personally known to me to be the same person whose name is subscribed to the foregoing instrument of writing as party thereto, and acknowledged the same to be his voluntary act & deed, & for the purposes therein mentioned.

[SEAL.] GEORGE M. ROBERTS,
Notary Public.

[50-cent stamp.]

49 Endorsed on the back of the foregoing deed is the following: Quit-claim deed from John A. Parker, jr., to Jno. A. Parker.

Petition.

In district court, Douglas county, Nebraska.

GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., defendants.

The said George Armstrong, plaintiff, complains of the said Addison

R. Gillmore and John A. Parker, jr., defendants, for that the said defendants, on the 26th day of September, A. D. 1860, at Omaha, N. T., made their certain promissory note in writing of that date, and there delivered the same to the said plaintiff, & thereby promised to pay to the order of said plaintiff, on or before the first day of May, 1861, the sum of one hundred & forty-five dollars and eighty-three cents, for value received; yet the said defendants have not paid said sum of money, or any part thereof, to said plaintiff, although requested so to do. And further says that he is the holder & owner of said
50 note, a copy of which is hereunto attached, marked Exhibit "A."

Wherefore plaintiff asks judgement against said defendants for the said sum of $145 83, together with interest thereon from the first day of May, 1861, and costs.

REDICK & BRIGGS,
Att'ys for Pl'ff.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

George Armstrong, being by me first duly sworn, deposes & says that he is the plaintiff in the above entitled ; that he has heard read the foregoing petition, & knows the contents thereof, & that the several matters & things therein stated are true.

GEORGE ARMSTRONG.

Subscribed in my presence and sworn to before me this 17 day of August, A. D. 1861.

E. B. CHANDLER, *Clerk*,
By JOHN H. KELLOM, *Deputy.*

EXHIBIT A.

$145 83. OMAHA, N. T., *September* 26, 1860.

On or before the first day of May, 1861, we promise to pay to the order of George Armstrong one hundred & forty-five $\frac{83}{100}$ dollars; value received.

(Signed) A. R. GILLMORE.
JOHN A. PARKER, JR.

Affidavit.

In the district court for Douglas County, Nebraska.

51 GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., defendants.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

The said George Armstrong, being by me first duly sworn, deposes & says that he is the plaintiff in the above-entitled cause; that he has this day commenced an action in said court against said Addison R. Gillmore and John A. Parker, jr., defendants, to recover of them the sum of $145 83, and interest from the first of May, 1861, for money due on a certain promissory note made by said defendants on the 26th day of September, 1860, for said sum of $145 83, payable to the order of said plaintiff on or before the 1st day of May, 1861.

And affiant further says that said claim is just; that no part of the same has been paid; and that there is now justly due this affiant on said promissory note the said sum of $145 83 and interest as aforesaid, and that affiant justly ought to recover the same from the said defendants.

52 And affiant furtner says that said John A. Parker, jr., one of said defendants, is a non-resident of the said Territory of Nebraska, but has property liable to attachment in said county. Affiant therefore asks an order of attachment against the property of said defendant Parker.

GEORGE ARMSTRONG.

Subscribed in my presence and sworn to before me this 17th day of August, 1861.

E. B. CHANDLER, *Clerk*,
By JOHN H. KELLOM, *Deputy*.

Endorsed on the back of the foregoing petition & affidavit is the following:

No. 238½. C. R. District court, Douglas county. George Armstrong vs. A. R. Gillmore and John A. Parker, jr. Petition and affidavit for attachment. Filed August 17, 1861; E. B. Chandler, clerk, by John H. Kellom, deputy. Redick & Briggs, att'ys for pl't'f.

53 THE TERRITORY OF NEBRASKA, *Douglas County:*

To the sheriff of the county of Douglas:

You are hereby commanded to notify the defendants, Addison R. Gillmore & John A. Parker, jr., that they have sued by George Armstrong, in the district court of Douglas County; that unless they answer by the 16th day of September, A. D. 1861, the petition of the said plaintiff against them filed in the clerk's office of said court, such petition will be taken as true, and judgement rendered accordingly.

You will make due return of this summons on the 26th day of August, A. D. 1861.

Witness my signature & the seal of said court at Omaha this 17th day of August, A. D. 1861.

[SEAL.] E. B. CLANDLER, *Clerk*,
By JOHN H. KELLOM, *Deputy Cle'k.*

Endorsed on the back of the foregoing summons is the following:

Doc. C, page 238. District court, Douglas County. George Armstrong vs. Addison R. Gillmore, John A. Parker, jr. Summons. Amount claimed of the defendant by the plaintiff is $145 83, and int. from
54 May 1, 1861. Redick & Briggs, plaintiff's attorney. Returned & filed Aug. 19, 1861. E. B. Chandler, clerk, by J. H. Kellom, deputy. Received Aug. 17th, 1861. at 5 p. m., John C. Hileman, sheriff.

I served this writ upon the within-named Addison R. Gillmore on the 19th day of August, 1861, by delivering to him personally a copy thereof. The within-named John A. Parker, jr., is not found in my county.

JNO. C. HILEMAN,
Sheriff Douglas Co.

40, service; 25, copy; 10, mileage; 75, sherif's fees.

The Territory of Nebraska, Douglas County, to the sheriff said county, greeting:

GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE, JOHN A. PARKER, JR.,
defendants.

In the district for Douglas County.

You are hereby commanded to attach and safely keep the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of the above-named defendant John A. Parker, jr., in your county, not exempt by law from being applied to
55 the payment of the above-named plaintiff claim, or so much thereof as will satisfy the said plaintiff's claim for one hundred and forty-five $\frac{83}{100}$ dollars, with interest from May 1, 1861, and fifty dollars, the probable cost of this action.

You will make due return of this order on the 26th day of August, A. D. 1861.

Witness my signature & the seal of said court at Omaha this 17th day of August, A. D. 1861.

[SEAL.]

E. B. CHANDLER,
Clerk of said Court,
JOHN H. KELLOM,
Deputy Clerk.

Endorsed on the back of the foregoing writ is the following:

Doc. 3, page 238. District court, Douglas County. George Armstrong vs. Addison R. Gillmore, John A. Parker, jr. Order of attachment. Redick & Briggs, plaintiff attorney. Returned & filed Aug. 19, 1861; E. B. Chandler, clerk, by J. H. Kellom, deputy. Received Aug. 17, 1861, at 5 p. m., John C. Hileman, sheriff.

August 17, 1861, having the annexed writ, I went to the place
56 where the defendant's property described in the annexed inventory and appraisment was found, & then & there, in the presence of Artemus Sahler & George R. Smith, two residents of Douglas County, named in said inventory, attached, & did declare, in their presence and hearing, that by virtue of said writ attached the said property; and did then & there with said two residents, after administering to them an oath to truly inventory and appraise said property, make an true inventory and appraisement of all the property attached, and which said inventory and appraisement, signed by me and said residents, is annexed to and returned with this writ, said property being occupied by the "Pioneer Hook and Ladder Company." I left with Benjamin Stickels, the captain of said company, a copy of said writ of attachment.

JOHN C. HILEMAN,
Sh'ff Douglas County.

40	Ser. of writ.
1 00	Taking charge of property.
25	Copy of writ.
50	Law inquest.
2 00	Their fees.
4 15	Sheriff's fees.

57 An inventory and appraisement of the property attached by John C. Hileman, sheriff of Douglas County, at the suit of George Armstrong against Addison R. Gillmore and John A. Parker, jr., by virtue of a writ of attachment issued out of the district court of said Douglas County, made this 17th day of August, A. D. 1861, by said sheriff and Artemus Sahler & George R. Smith, two residents of said county; the said Artemus Sahler & George R. Smith, in whose presence the said property was attached, being first duly sworn by said sheriff as the law directs, to wit: Commencing 22 feet from S. E. corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements and appurtenances located thereon; said property being situate in the city of Omaha, in said county of Douglas, and Territory of Nebraska, and appraised at $350 00.

JOHN C. HILEMAN, *Sh'ff.*
ARTEMUS SAHLER.
GEO. R. SMITH.

58 TERRITORY OF NEBRASKA, *County of Douglas, ss:*

I, Merrill H. Clark, being duly sworn, on my oath do say that the notice hereunto attached was published for five consecutive weeks next after the 24th day of August, A. D. 1861, in the Omaha Nebraskian, a newspaper published by M. H. Clark, and printed in said county of Douglas, and which was during that time in general circulation in said county.

M. H. CLARK.

Sworn to and subscribed before me this 15th day of October, A. D. 1861.

[SEAL.] WILLIAM A. LITTLE,
Notary Public, Douglas County, N. T.

Legal notice.

GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., defendants.

In the district court for Douglas County, N. T.

To said John A. Parker, jr., non-resident:

Take notice that the said plaintiff did, on the 17th day of August, 1861, commence in said court a civil action against said defendants to recover of you & the said Addison R. Gillmore the sum of $145 83

59 for money due on a promissory note made by you and said Gillmore, dated September 26, 1860, for said sum of $145 83, payable to said George Armstrong or order, on or before the first day of May, 1861, the whole of which note & interest remains unpaid. And you will further take notice that to secure said claim the plaintiff has caused to be attached in this action of your property the following described real estate, situated in the city of Omaha, in said county of Douglas, to wit: Commencing 22 feet from the southeast corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning,

with the improvements thereon. You are required to plead, answer, or demur to said petition filed in said action on or before the 7th day of October, 1861, or the same will be taken as true, & judgement rendered accordingly.

August 24, 1861.

REDICK & BRIGGS,
Att'ys for Plaintiff.

[34w5s.]

Endorsed on the back of the foregoing affidavit is the following:

60 238. George Armstrong vs. Parker & Gillmore. Affidavit of publication. Filed Oct. 15th, 1861. [Seal.] Jno. H. Kellom, clerk.

TERRITORY OF NEBRASKA, *Douglas County:*

To the sheriff of said county, greeting:

Whereas George Armstrong, on the 17th day of August, 1861, sued out of the clerk's office of the district court of said county an order of attachment, directed & delivered to the sheriff of said county, requiring him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of John A. Parker, jun., defendant, in said county, not exempt by law from being appropriated and applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim:

And said sheriff returned said order executed by attaching the following property, to wit, commencing 22 feet from S. E. corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence
61 east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements and appurtenances located thereon; said property being situated in the city of Omaha, in said county of Douglas, and Territory of Nebraska:

And afterwards such proceedings were had in said district court in Douglas County that, at the October term of said court, A. D. 1861, the said plaintiff recovered a judgement against said defendant for $152 49 damages, and $19 50, the costs of said suit:

You are therefore commanded to proceed, as upon execution, to advertise and sell such of the property heretofore attached in this action, now in your hands remaining, as will satisfy the amount of the aforesaid judgement for damages & cost, taxed as aforesaid, & costs which may accrue by virtue of this order.

And do you make a return of this order, together with your proceedings thereon, within sixty days from the date hereof.

Witness my hand & the seal of said court, at the city of Omaha, this 4th day of December, A. D. 1861.

[SEAL.] J. H. KELLOM, *Clerk.*

62 Endorsed on the back of the foregoing order of sale is the following:

Doc. C, page 238. District court, Douglas County. George Armstrong vs. Addision R. Gillmore, John A. Parker, jr. Order of sale. This writ, $1; recording sheriff's return & appraisement, 1—$2 00. Returned & filed Feb. 1, 1862, J. H. Kellom, clerk.

TERRITORY OF NEBRASKA, *Douglas County, ss:*

Received this writ Dece..ber 4th, A. D. 1861, at 10 o'clock a. m.

Rec'd, Omaha, Feb. 3, 1862, of Tho's L. Sutton, sheriff, $156 79, being the amount in full of the judgement & interest in the within cause.

REDICK & BRIGGS,
Att'ys for the Plaintiff George Armstrong.

TERRITORY OF NEBRASKA, *County of Douglass, ss :*

Inventory & appraisement of real estate levied upon by Thomas L. Sutton, sheriff of Douglas County, Nebraska Territory, by virtue of an order of sale issued in a suit wherein George Armstrong is
63 plaintiff, and Addison R. Gillmore & John A. Parker, jr., are defendants, in the district court in and for said county, made upon actual view by said sheriff, and E. Estabrook and E. G. Sears, two disinterested freeholders & residents of said county—the said E. Estabrook & E. G. Sears being first duly sworn by said sheriff to impartially appraise said real estate so levied upon—the following property, to wit: Commencing 22 feet from S. E. corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon; said property being situated in the city of Omaha, in said county of Douglas, and Territory of Nebraska, appraised at $300 00.

Omaha City, December 5th, 1861.

THOMAS L. SUTTON, *Sheriff.*
E. ESTABROOK.
E. G. SEARS.

Endorsed on back of above inventory is the following:

238. Armstrong vs. Gillmore et al. Filed Dec. 7, 1861, J. H. Kellom, clerk.

65* GEORGE ARMSTRONG, PL'T'FF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., def'ts.

In pursuance of an order heretofore made in this cause directing the sheriff of this county to sell so much of the attached property as should be necessary to satisfy the judgement and costs in this action, the said sheriff has sold all of the said attached property, & now make due return thereof to this court. And the court having examined all of the proceedings connected with said sale, and finding that due & legal notice has been given of the time & place of such sale; that the said property was duly appraised; that the same was bid off for more than two thirds of its appraised value, and finding that all the proceedings were, in all respects, regularly conducted & made in conformity with law:

It is ordered & adjudged that the said sale, and all proceedings relating thereto, be, and the same is hereby, confirmed.

& it is further ordered that Thomas L. Sutton, said sheriff, make a good & sufficient deed of said premises to the purchasers thereof.

66 By the court.

W'M F. LOCKWOOD, *Judge.*

Endorsed on the back of the above order is the following:

No. 238. Geo. Armstrong vs. A. R. Gillmore & John A. Parker, jr. Order of confirmation of sale. Filed May 10, 1862, J. H. Kellom.

Precipe.

District court, Douglas County.

GEORGE ARMSTRONG, PL'T'F
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., def'ts.

Please issue a summons in this cause for the said defendants, directed to the sheriff of said county, returnable according to law. Pl'ff asks judgment for $145 83 and interest from the 1st day of May, 1861, & costs.

REDICK & BRIGGS,
Atty's for Pl't'ff.

Endorsed on the back of the foregoing precipe is the following:

No. 238. George Armstrong vs. Gillmore & Parker. Precipe. Filed Aug. 17, 1861, E. B. Chandler, clerk, by John H. Kellom, deputy. Redick & Briggs, att'y for pl't'ff.

64* GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., defendants.
} In attachment.

And now comes the said George Armstrong, plaintiff; and the said Addison R. Gillmore & John A. Parker, jr., defendants, having failed to demur or answer to the petion of the said plaintiff,

It is considered that the said George Armstrong ought to recover the sum of one hundred and fifty-two $\frac{49}{100}$ dollars, his damages, by reason of the premises. And the court do assess the damages of said plaintiff to the said sum of $152 49.

It is therefore considered that the said plaintiff recover of & against the said Addison R. Gillmore and John A. Parker, jr., defendants, the said sum of $152 49, with his costs of suit in this behalf expended.

And it is further ordered that the sheriff of Douglas County, N. T., proceed as upon execution & advertise & sell so much of the
67 property attached in this action as will satisfy the judgement, costs, and all accruing costs, & make due return to this court.

Endorsed on the back of above entry the following: G. Armstrong vs. Parker and Gillmore. Judgement entry. Arthur Bridgman vs. O. C. Burnham & Tho's F. Stuart. 72 68, 18 60 int.—$90 28.

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

December 4th, A. D. 1861, at 10 o'clock a. m., received this writ. I levied, on the 7th day of December, A. D. 1861, this writ on the following real estates of the said John A. Parker, jr., one of the defendants in this action, situated in said county of Douglas & previously attached in this action, & subject to this order of sale, to wit: Commencing 22 feet from the southeast corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon; said property being
68 situated in the city of Omaha, in said county of Douglas, & Territory of Nebraska. & thereupon I summoned E. Estabrook & E. G. Sears, two disinterested freeholders of said county, & administered

to them an oath impartially to appraise said lands so levied upon, upon actual view thereof. And afterwards, on the 5th day of December, A. D. 1861, the said appraisers returned to me in writing their valuation of said lands, a copy of which I forthwith deposited with the clerk of the said district court. & thereupon, on the 7th day December, A. D. 1861, I caused a notice to be published in the Omaha Nebraskian, a newspaper printed in said county of Douglas, and in general circulation therein, for thirty days prior to said day of sale, that I would offer said lands for sale at the door of the court-house in Omaha City, in said county of Douglas, on the 21st day of January, A. D. 1862, at 2 o'clock p. m. of said day; and, at the time & place stated in said notice, I offered the said premises for sale at public auction, & sold the same to John I. Redick & Clinton Briggs for the sum of $201 00, they being the highest & and the best bidders therefor, and that sum being
69 more than two-thirds of the appraised value thereof.

Made by said sale		$201 00
For costs retained	$15 02	
Costs in judgement	19 50	
Costs endorsed on order of sale	2 00	
Interest	4 30	
Balance	160 18	
		$201 00

THOMAS L. SUTTON, *Sheriff.*

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

Inventory & appraisement of real estate levied upon by Thomas L. Sutton, sheriff of Douglas County, Nebraska Territory, by virtue of an order of sale issued in a suit wherein George Armstrong is plaintiff, & Addison R. Gillmore & John A. Parker, jr., are defendants, in the district court in & for said county, made upon actual view by said sheriff and E. Estabrook & E. G. Sears, two disinterested freeholders & residents in said county; the said E. Estabrook and E. G. Sears being first duly sworn by said sheriff to impartially appraise said real
70 estate so levied upon the following *the following* property, to wit: Commencing 22 feet from S. E. corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon; said property being situated in the city of Omaha, in said county of Douglas, & Territory of Nebraska. Appraised at $300 00.

Omaha, N. T., December 5th, 1861.

THOMAS L. SUTTON, *Sheriff.*
E. ESTABROOK.
E. G. SEARS.

Endorsed on back of above order of sale as follows:
Armstrong vs. Gilmore et al. Order of sale.

Sheriff's sale.

In pursuance & by virtue of a decretal order made by the district court of Douglas County, sitting in chancery, bearing date the 4th day of December, A. D. 1861, in a certain pending therein, wherein

Precipe.

District court, Douglas County.

GEORGE ARMSTRONG, PL'T'F
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., def'ts.

Please issue a summons in this cause for the said defendants, directed to the sheriff of said county, returnable according to law. Pl'ff asks judgment for $145 83 and interest from the 1st day of May, 1861, & costs.

REDICK & BRIGGS,
Atty's for Pl't'ff.

Endorsed on the back of the foregoing precipe is the following:

No. 238. George Armstrong vs. Gillmore & Parker. Precipe. Filed Aug. 17, 1861, E. B. Chandler, clerk, by John H. Kellom, deputy. Redick & Briggs, att'y for pl't'ff.

64* GEORGE ARMSTRONG, PLAINTIFF,
vs.
ADDISON R. GILLMORE AND JOHN A. PARKER, jr., defendants. } In attachment.

And now comes the said George Armstrong, plaintiff; and the said Addison R. Gillmore & John A. Parker, jr., defendants, having failed to demur or answer to the petion of the said plaintiff,

It is considered that the said George Armstrong ought to recover the sum of one hundred and fifty-two $\frac{49}{100}$ dollars, his damages, by reason of the premises. And the court do assess the damages of said plaintiff to the said sum of $152 49.

It is therefore considered that the said plaintiff recover of & against the said Addison R. Gillmore and John A. Parker, jr., defendants, the said sum of $152 49, with his costs of suit in this behalf expended.

And it is further ordered that the sheriff of Douglas County, N. T., proceed as upon execution & advertise & sell so much of the
67 property attached in this action as will satisfy the judgement, costs, and all accruing costs, & make due return to this court.

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THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

December 4th, A. D. 1861, at 10 o'clock a. m., received this writ. I levied, on the 7th day of December, A. D. 1861, this writ on the following real estates of the said John A. Parker, jr., one of the defendants in this action, situated in said county of Douglas & previously attached in this action, & subject to this order of sale, to wit: Commencing 22 feet from the southeast corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon; said property being
68 situated in the city of Omaha, in said county of Douglas, & Territory of Nebraska. & thereupon I summoned E. Estabrook & E. G. Sears, two disinterested freeholders of said county, & administered

to them an oath impartially to appraise said lands so levied upon, upon actual view thereof. And afterwards, on the 5th day of December, A. D. 1861, the said appraisers returned to me in writing their valuation of said lands, a copy of which I forthwith deposited with the clerk of the said district court. & thereupon, on the 7th day December, A. D. 1861, I caused a notice to be published in the Omaha Nebraskian, a newspaper printed in said county of Douglas, and in general circulation therein, for thirty days prior to said day of sale, that I would offer said lands for sale at the door of the court-house in Omaha City, in said county of Douglas, on the 21st day of January, A. D. 1862, at 2 o'clock p. m. of said day; and, at the time & place stated in said notice, I offered the said premises for sale at public auction, & sold the same to John I. Redick & Clinton Briggs for the sum of $201 00, they being the highest & and the best bidders therefor, and that sum being
69 more than two-thirds of the appraised value thereof.

Made by said sale		$201 00
For costs retained	$15 02	
Costs in judgement	19 50	
Costs endorsed on order of sale	2 00	
Interest	4 30	
Balance	160 18	
		$201 00

THOMAS L. SUTTON, *Sheriff.*

THE TERRITORY OF NEBRASKA, *County of Douglas, ss:*

Inventory & appraisement of real estate levied upon by Thomas L. Sutton, sheriff of Douglas County, Nebraska Territory, by virtue of an order of sale issued in a suit wherein George Armstrong is plaintiff, & Addison R. Gillmore & John A. Parker, jr., are defendants, in the district court in & for said county, made upon actual view by said sheriff and E. Estabrook & E. G. Sears, two disinterested freeholders & residents in said county; the said E. Estabrook and E. G. Sears being first duly sworn by said sheriff to impartially appraise said real
70 estate so levied upon the following *the following* property, to wit: Commencing 22 feet from S. E. corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon; said property being situated in the city of Omaha, in said county of Douglas, & Territory of Nebraska. Appraised at $300 00.

Omaha, N. T., December 5th, 1861.

THOMAS L. SUTTON, *Sheriff.*
E. ESTABROOK.
E. G. SEARS.

Endorsed on back of above order of sale as follows:
Armstrong vs. Gilmore et al. Order of sale.

Sheriff's sale.

In pursuance & by virtue of a decretal order made by the district court of Douglas County, sitting in chancery, bearing date the 4th day of December, A. D. 1861, in a certain pending therein, wherein

George Armstrong vs. complainant & Addison R. Gillmore & John A. Parker, jr., are defendants, I will, on the 21st day of January,
71 A. D. 1862, at 2 o'clock p. m. of said day, at the court-house, in the city of Omaha, sell at public auction to the highest bidder, for cash, the following-described real estate lying & being in said county of Douglas, & Territory of Nebraska, to wit: Commencing 22 feet from south-east corner of lot 1, in block 121, on the east line of said lot; thence west 35 feet; thence north 20 feet; thence east 13 feet; thence north 46 feet; thence east 22 feet; thence south 66 feet, along the east line of said lot, to the place of beginning, and all the improvements & appurtenances located thereon, said property being situated in the city of Omaha, in said county of Douglas, and Territory of Nebraska.

Omaha, December 7th, 1861.

THOMAS L. SUTTON,
Sheriff of Douglas County.

W4,9]

Upon which said paper appears endorsements in words and figures following, to wit:

124. U. S. cir't ct. John A. Parker vs. Henry L. Latey. Bill of ex'ns, filed May 30th, 1868, E. B. Chandler, clerk.

72

73 And thereupon afterwards, to wit, on the 21st day of May, A. D. 1869, the following proceedings were had, and appear of record in said cause in words and figures following, to wit:

JOHN A. PARKER
vs.
HENRY L. LATEY. } No. 124.—Ejectment.

This cause this day came on to be heard on the motion of said plaintiff for a new trial, heretofore argued by counsel for the parties herein, and taken by the court under advisement.

Thereupon, upon consideration thereof, it was ordered that said motion for a new trial be, and the same is hereby, overruled.

And it was further ordered, adjudged, and decreed as follows, to wit: That Henry L. Latey was, at the time of the commencement of this suit, and is the true and lawful owner of, and entitled to the possession of, the premises in question, to wit: Commencing at a point forty four (44) feet north of the southeast corner of lot one, (1,) in block one hundred and twenty-one, in the city of Omaha, Douglas County, Nebraska; thence running west twenty-two (22) feet; thence north forty-four
74 (44) feet; thence east twenty-two (22) feet; and thence south forty-four (44) feet, along the east line of said lot, to the place of beginning. And that said defendant recover from said plaintiff his costs in this suit expended.

And thereupon afterwards, to wit, on the 3rd day of November, A. D. 1869, a paper was filed in said circuit court in words and figures following, to wit:

Know all men by these presents, that we, John A. Parker, as principal, and James M. Woolworth, as surety, are held and firmly bound unto Henry L. Latey in the full and just sum of two hundred and fifty dollars, to be paid to the said Henry L. Latey, his certain attorney, ex-

ecutors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 3rd day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

Whereas lately, at a circuit court of the United States for the
75 district of Nebraska, in a suit depending in said court between John A. Parker, plaintiff, and Henry L. Latey, defendant, a judgement was rendered against said plaintiff; and the said plaintiff having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgement in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said John A. Parker shall prosecute said writ of error to effect, and answer all costs if he fails to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

JOHN A. PARKER. [SEAL.]
J. M. WOOLWORTH. [SEAL.]

Sealed and delivered in presence of—
WATSON B. SMITH.

Approved by—

ELMER S. DUNDY, *Judge.*

Upon which said paper appears endorsements in words and figures following, to wit:

76 No. 124. U. S. circuit court, district of Nebraska. John A. Parker vs. Henry L. Latey. Bond. Filed November 3rd, 1869. Watson B. Smith, clerk.

And afterwards, to wit, on the 3rd day of November, A. D. 1869, the following writ of error and citation was filed in said circuit court in words and figures following, to wit:

77 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Nebraska, greeting:

Because, in the record and proceedings, as also in the rendition of a judgement of a plea which is in the said circuit court before you between John A. Parker, plaintiff, & Henry L. Latey, defendant, a manifest error hath happened, to the great damage of the said plaintiff in said cause, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full & speedy justice done to the parties aforesaid in this behalf, do command you, if judgement be therein given, that then, under your seal, distinctly & openly, you send the record & proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then & there held, that, the record & proceedings aforesaid being inspected, the said Supreme Court
78 may cause further to be done therein, to cor that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the 3d day of November, 1869.

[SEAL.] WATSON B. SMITH,
Clerk of the U. S. Circuit Court for the District of Nebraska.

Allowed by—

ELMER S. DUNDY, *Judge.*

(Indorsed:) No. 124. U. S. circuit court, district of Nebraska. John A. Parker vs. Henry L. Latey. Writ of error. Filed Nov. 3, 1869, Watson B. Smith, clerk.

79 The United States of America to Henry L. Latey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Nebraska, wherein John A. Parker is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the paid plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this 3rd day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

ELMER S. DUNDY, *Judge.*

80 On this 8th day of November, in the year of our Lord one thousand eight hundred and sixty-nine, personally appeared J. T. Hoile, before me, the subscriber, Watson B. Smith, clerk U. S. courts, and makes oath that he delivered a true copy of the within citation to Henry L. Latey, in the city of Omaha, Nebraska.

Marshal fees, $2 00.

J. T. HOILE,
U. S. Marshal Dist. of Neb.

Sworn and subscribed to before me this 8th day of November, 1869.

WATSON B. SMITH,
Clerk U. S. Courts, Dist. of Nebraska.

(Indorsed:) No. 124. U. S. circuit court, district of Nebraska. John A. Parker vs. Henry L. Latey. Citation. Filed Nov. 8th, 1869, Watson B. Smith, clerk.

81 UNITED STATES OF AMERICA,
District of Nebraska, ss:

I, Watson B. Smith, clerk of the circuit court of the United States for said district of Nebraska, do hereby certify that the foregoing are true and faithful transcripts from the records and files of said court, and the whole thereof, and the endorsements thereon, in the case of John A. Parker vs. Henry L. Latey.

I further certify that a copy of the foregoing writ of error and citation has been filed and remains in my office.

Witness my hand and the seal of said court at Omaha this 9th day of December, A. D. 1869.

[SEAL.] WATSON B. SMITH, *Clerk.*

(Indorsement on cover:) No. 431. John A. Parker, plaintiff in error, vs. Henry L. Latey. Nebraska C. C. U. S.

Filed 7th March, 1870.

[No. 201.]

SUPREME COURT OF THE UNITED STATES.

JOHN A. PARKER, *Plaintiff in Error*

vs.

HENRY L. LATEY.

ARGUMENT FOR DEFENDANT IN ERROR.

There is nothing in the record showing the subject matter in contro versey t› be worth more than five hundred dollars. If no furthe showing is made the writ of error should be dismissed.

Thi› is an action of ejectment. Both parties claim title through on John A Parker, Jr.; the plaintiff by deed from Parker to him, date Sept. 26th, 1867; and the defendant claims mediately from Parker b virture of a judicial sale of the property in controversey on a judgmen and order of sale entered in a suit in the District Court for Dougla county, Nebraska, in 1861, in which George Armstrong was plaintiff and the above named John A. Parker, Jr., impleaded with another wer defendants. Parker was not served with summons in the actio because at the time, as admitted by the record he was a non-resident o and absent from Nebraska But his property (the property in question was attached in the action. after the proper affidavit required by th laws of Nebraska had been filed. Judgment was rendered again Parker and another, and the attached property was ordered to be sol It was sold by the Sheriff in same year to Redick & Briggs, and sa confirmed by the court in May, 1862, and deed made in usual form b the Sheriff to the purchasers.

The proceedings in this suit will be found in the Record, on the pages following:

	PAGE.
Petition,	17
Affidavit for Attachment,	18
Summons and Return,	19
Order of Attachment, (Seal)	20
Return of Order,	20-21
Publication and proof of same	21
Judgement and Order for Sale of attached property,	24
Order of Sale,	22
Sheriff's Return	24-25
Order Confirming Sale,	23

The Sheriff's deed was not produced in evidence, because it was lost. The execution and delivery of the deed was shown by the direct and positive testimony of the Sheriff and other witnesses, and so was the loss of the deed; See testimony of Briggs, Sutton, Redick, Hall, Delone, pages 5, 6 and 7. And besides the bill of exceptions (page 10) recites the fact that "defendant proved that Thomas L. Sutton, as Sheriff, had made and delivered a deed of the premises mentioned in said record, to John I. Redick and Clinton Briggs; that said deed was afterwards lost, and that said deed was in the form prescribed by law for such deeds, and was duly executed and acknowledged."

The only question presented by the record is this: Had the District Court jurisdiction over the *property* of Parker? (it not being claimed that it had jurisdiction of his person.) If if had, the judgment of the Circuit Court must be affirmed; if not, it must be reversed. The laws of Nebraska, at the time, and still do, authorize the attachment and sale of the property of non-resident defendants when the debt is founded in contract; (this was an action on a promissory note.)

See R. S. of Nebraska, 425; Sections 198-199.

It will be objected that no affidavit on which to base the notice by publication appears in the files of the case. This is true. It is also true that the Statute directs the filing of such an affidavit; [Id. 405, sections 77 and 78] The absence of this affidavit would render the judgment *erroneous*, not void. No jurisdictional fact was involved in filing or not filing this affidavit. At what stage of the proceedings did the court acquire jurisdiction over the property? When the officer attached the property by virtue of the authority of the order of

attachment issued under the seal of the court. The validity of the affidavit upon which the order of attachment was issued is not questioned. The affidavit for publication is a *subsequent* proceeding. It is a proceeding to be had in the cause *after* the court has acquired jurisdiction of the property, and if the court proceeded to judgment in the absence of this proceeding, its judgment is simply erroneous, and subject to review in an Appellate Court. The judgment was good against the *property attached*, but no further; the court not having jurisdiction of the person of the defendant

Questions relating to the validity of attachment were most thoroughly and ably considered and disposed of by this court in the case of Voorhees *vs.* Bank of United States.—[10, Pet. 449; also in 11. Wal 581]

The court in which this judgement was rendered was one of general jurrisdiction, and if there is any principal of law well settled, it is this, that the judgements of courts of this class cannot be impeached or questioned in a callateral proceeding (like the present) unless it conclusively appears from the record itself that the court had not jurisdiction of the parties or subject matter

II.

It may be claimed that Parker, defendant in this attachment suit was an *alien enemy* at the time the suit was commenced, and hence the suit could not be legally commenced against him while he sustained that relations

It is admitted that in the Spring of 1861; and thence on to the close of the late rebellion John A. Parker, Jr., was a citizen of the State of Verginia, and in the army of the so called, Confederate States. He left Nebraska to join that army. [Record, page 10.]

It is undoubtedly a rule of international law that commercial and business relations are suspended between the subjects or citizens of Nations at war with each other, and we may admit, that the exigences of war made the late confederacy *de facto* and Independant State. It was an independent belligerant just so far as the Goverment of United States deemed it expedient, for reasons of humanity or policy to recognize it as such, but no further.

The obligation and duties of John A. Parker Jr., were never waived or suspended by any act of the Government, but it always claimed his allegiance to it. It is true, if he was captured in the war, the Government

permitted his exchange for a Union soldier. This was a matter of grace not of right.

It is also true that Mr. Paker, might not at the time he left Nebraska for the S uthern service in 1861, have desired to pay the note, then due on which the attachment suit was brought; to pay it, would be to place money in the hands of his enemeis, better take it south among his friends. At the time he was sued, the plaintiff says that he (Parker, Jr.) was in the rebel army, and hence it is claimed that it was impossible, or at least very inconveient for him to be out in Nebraska looking after the suit All this is true, but a citizen of Nebraska, serving in the Union Army at that time could not avail himself of this defence. He must pay his debt, or loose his property.

It is not often that a man's civil rights are *enlarged* by his pleading that he has been guilty of the highest crime known to the laws.

Again, it does not appear that Armstrong, the judgment crediter, or the purchaser at the Sheriff's Sale knew that Parker was in the rebel army. They might have supposed him in the Union Army, and in that event the title acquired at the judicial sale would be good This the plaintiff will admit, it being only the rebel army business that spoils the title

If the record appeared regular, we hardly think it was incumbent on purchaser of real estate at judicial sales during the war, to inquire whether the judgment debter was in the rebel army or not, much less would it be necessary for mediate grantees to make such enquiry.

We hardly think that titles to real estate in this country, can depend on any such contingency.

But it is not necessary to rely on general reasoning, for this court held in the case of Ludlow *vs.* Ramsey, [11, Wal. 581]; that when "a party voluntarily leaves his country or residence for the purpose of engaging in hostilities against the former, he cannot be permitted to complain of legal proceedings regularly prosecuted against him as an absentee, on the ground of his inability to return or hold communication with the place where the proceedings are conducted." This is precisely the situation of the defendant Parker in the attachment suit, as shown by the record.

JOHN I. REDICK, AND
CLINTON BRIGGS,
Counsel for Defendant in Error.